



Virginia  
Regulatory  
Town Hall

Notice of Intended Regulatory Action  
Agency Background Document

<b>Agency Name:</b>	Department of Health (State Board of)
<b>VAC Chapter Number:</b>	12 VAC 5-390 (current regulation) 12 VAC 5-391 (proposed regulation)
<b>Regulation Title:</b>	Rules and Regulations for the Licensure of Hospices
<b>Action Title:</b>	Repeal of current regulation Promulgation of proposed regulation
<b>Date:</b>	April 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

Hospice is a coordinated program of home and inpatient care providing palliative and supportive medical and other health services to terminally ill patients and their families. A hospice patient has been diagnosed as terminally ill, with an anticipated life expectancy of six months or less. A hospice program provides care to meet the physical, psychological, social, spiritual and other special needs that are experienced during the final stages of illness, the eventual death, and subsequent bereavement. Hospice care must be available twenty-four hours a day, seven days a week. There are currently 56 licensed hospices in the Commonwealth. The essence of the revised regulation is to clarify issues of practice and generally update the regulation to reflect current industry practices.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

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The regulation is promulgated under the authority of Section 32.1-162.5 of the Code of Virginia, which grants the Board of Health the legal authority “to prescribe such regulation governing the activities and services provided by hospices as may be necessary to protect the public health, safety and welfare. Such regulations shall include, but not be limited to, the requirements for: the qualifications and supervision of licensed and nonlicensed personnel; the provision and coordination of inpatient care and home treatment and services; the management, operation, staffing and equipping of the hospice program; clinical and business records kept by the hospice; [and] procedures for the review of utilization and quality of care.” Therefore, this authority is mandated.

The General Assembly has also recognized the need to update the regulation. In 1998, the General Assembly adopted Senate Joint Resolution 164 (SJR164), which requested the Board of Health to begin the process of reviewing and revising the regulation governing hospice.

Section 32.1-162.5 of the Code and SJR164 are available through the Virginia Division of Legislative Services LIS web site (<http://leg1.state.va.us/lis.htm>). The proposed regulation does not exceed federal minimum requirements.

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

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The hospice regulation (12 VAC 5-390) has not been revised since first promulgated in 1990. The Department has long recognized the need to update the current regulation governing hospice organizations to: (i) address in greater detail the services that are unique to the hospice program such as volunteer services, bereavement counseling, family-focused rather than patient centered service, palliative versus curative care, and the interdisciplinary team approach to service provision, (ii) reorganize the regulation into a more user-friendlier format, and (ii) reconcile the state regulatory requirements with the federal regulations, where appropriate. Because of the extensive revision planned, the Department proposes replacing the current hospice organization regulation (12 VAC 5-390) with a proposed regulation (12 VAC 5-391). For example, the “General Information” section of the current regulation does not provide

adequate instructions for obtaining and maintaining a license, responding to an inspection report, or conducting home visits. Other changes to be considered include financial controls; patient rights standards, criminal record clearances and quality improvement standards. The intent of the revised regulation is to be more reflective of the changes that have occurred in the industry in the last several years while providing the necessary consistency in the provision of hospice services in order to assure safe, adequate and efficient hospice program operation.

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

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The regulation is clearly and directly mandated by law. The regulation honors the Department's statutory charge and is the least burdensome alternative available for adequately addressing the mandate of the law. The hospice community is very supportive of the hospice regulation and licensure program as indicated by the following quote from W. R. Watts, Executive Director of the Virginia Association for Hospices:

“The needs of hospice patients are so great, and the services provided by a licensed hospice so comprehensive, that state regulation is essential to be sure that there is uniformity in provision of service, both within communities and throughout the Commonwealth. . . The integrity of the hospice concept must be protected.”

## Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The regulation does not directly impact the family unit in Virginia, and should not impinge appreciably on any of the considerations enumerated in the prefatory directions, above. The regulation effects only those organizations desiring to provide hospice services to the terminally ill. Indirectly, the regulation will have a positive impact on those families using hospice services as it assures the necessary consistency in services provided by hospice programs, and should, thereby, make countless difficult situations somewhat easier.